

REMARKS

Receipt of the Office Action mailed February 26, 2008 is acknowledged. No claims have been canceled or amended. Accordingly, claims 1 and 3-14 are pending.

Notice of Improper RCE

In view of the Notice of Improper RCE mailed July 24, 2008, applicants are submitting this Request for Reconsideration along with a new Request for an RCE and the Information Disclosure Statement filed on June 26, 2008.

Allowable Subject Matter

Applicants note with appreciation that the Examiner has indicated that claims 7-9, 12 and 14 contain allowable subject matter. In view of the foregoing amendment and the reasons set forth below, applicants submit that all pending claims are now allowable.

Section 112 Rejection

Claims 1 and 3-14 stand rejected under 35 USC § 112, second paragraph. Applicants are not clear why the Examiner concludes that a specific structure for a test element is necessary. One skilled in the art would understand a recess can be fabricated in such a way to contain a test element. No further structure of the test element or recess is required under Section 112, second paragraph. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Prior Art Rejection

Claims 1-6 10, 11 and 13 stand rejected under 35 USC § 102 (b) as being anticipated by Clark et al. (US 6,90,617), hereinafter "Clark".

Applicants submit that Clark neither anticipates or renders obvious the claimed invention for the reasons of record.

Moreover, applicants further disagrees with respect to the Examiner's Response to Arguments. Applicants point out that the claim sets forth that "the recesses would be on the 'same line of travel.'" Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Obviousness-type Double Patenting Rejection

Claims 1-14 and 30-31 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 24-26 of co-pending application No. 10/436,537.

In accordance with MPEP 804 (I)(B)(1), applicants request that any requirement for a terminal disclaimer be held in abeyance until one of the applications issues as a patent.

An early and favorable action on the merits are respectfully requested. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 10-0750/CDS0290/TJB.

Respectfully submitted,

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